



Department of  
**Commerce &  
Insurance**

# NewsLine

*The Official Publication of the Tennessee Auctioneer Commission  
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## Table of Contents

### Page One

Commission Report—CE

### Page Two

Understanding Contracts

### Page Three

Understanding Contracts (continued)

Commission Calendar

Legal Reminder

Disciplinary Action Report

### Page Four

Types of Auctions

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## Mission Statement

The Mission of the Tennessee Auctioneers Commission is to protect the public through the establishment and administration of minimum requirements for candidates and licensees, effective professional education of licensees and enforcement of professional conduct.

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## Commission Report

The Tennessee Auctioneer Commission was created in 1967 for the purpose of licensing and regulating auctioneers, apprentice auctioneers, auction firms, auction galleries, branch firms and branch galleries. The Commission also enacts rules addressing professional conduct and standards of practice.

The Mission of the Tennessee Auctioneer Commission is to protect the public through establishment and administration of minimum requirements for candidates and licensees, effective professional education of licensees and enforcement of professional conduct.

In keeping with their Mission Statement, the Commission provides three professional education seminars each year available to the licensees and designed to both meet the minimum standard of six (6) hours of continuing education required for license renewal, but also to keep licensees informed of legal changes, industry changes, and to advance the professional advantages of all licensees. These seminars are provided at no cost to the licensees.



The TAC Seminar conducted in Knoxville on November 9, 2015 featured Robert Mayo talking about Online Auctions and Social Media marketing. Ninety-five licensees turned out to take advantage of the highest caliber of education available in the auction industry. Our next seminar will be in Jackson, Tennessee on March 7, 2016.

Watch for your notification postcard with details on the location. The seminar will also present Wendell Hanson instructing on lotting and auction sale order.

*"The Tennessee Department of Commerce and Insurance is committed to principals of equal opportunity, equal access, and affirmative action." Contact the EEO Coordinator or ADA Coordinator at 615-741-2177(TDD).*

# Understanding Auction Contracts

The Tennessee Code Annotate Section 62-19-112(b)(9) clearly indicates that licensees must have a written contract with the owner of the goods being sold. This contract must also include the terms and conditions upon which the licensee receives the property to offer for sale. Section 62-19-112(b)(8) also specifies that the licensee must provide all interested parties copies of the contract at the time it is signed. Under the provisions of Section 62-19-111(h)(11), "all contracts for services to be performed by an auction firm...must be negotiated and signed by an auctioneer who is a member of the firm or by the auctioneer's attorney".\*\*

By definition a contract is an agreement between two or more parties that is enforceable by law. A contract will contain the following key elements: competent parties, mutual agreement, legal subject matter and consideration.

## Competent Parties

The parties to a contract must be legally competent and have the mental capacity to enter into a contract. Persons that may be determined not to be competent parties include:

- ◆ Anyone under the age of 18 years of age and classified as a minor;
- ◆ Persons with mental limitations such as a permanent or temporary condition affecting the mind or ability to understand; or
- ◆ Intoxicated persons under the influence of alcohol or drugs.

For example, an elderly widower with the early symptoms of dementia can enter into a contract; however, if it is later determined he did not have the capacity to understand the agreement, the contract may be voided. Of importance is whether the parties to the contract possess the capacity to fully understand the agreement they have entered into.

## Mutual Agreement

The formation of a contract will begin with an offer and an acceptance of an offer. This is frequently called a 'meeting of the minds'. Once a meeting of the minds has been reached, the contract is drawn and signed to document this agreement.

Can an auctioneer enter into a verbal contract? Yes. For example, when an auctioneer says, "Sold" he may have entered into a binding contract between the seller and the buyer. Can a contract to sell items at auction be a verbal contract? No. Remember, the Tennessee Auctioneer Law requires a written contract between the auctioneer and the seller.

Issues that can affect the 'meeting of the minds' and call the contract into question include:

- ◆ Mistakes,
- ◆ Undue influence,
- ◆ Fraud,
- ◆ Innocent Misrepresentation,
- ◆ Duress, and
- ◆ Unconscionability.

While errors and accidental misrepresentations can happen, it is important for licensees to be thorough in the execution of their contracts to avoid them. Fraud, undue influence, duress and unconscionability are more intentional and are clear indicators that the minds did not really meet.

## Legal Subject Matter

A contract must be for a legal purpose, to sell legal subject matter. For example, a contract to sell stolen merchandise is not a binding contract. By the same token, a contract may not be binding if it goes against public policy, such as a contract that promoted a breach of the law, or that would harm the state or its citizens. An example of a contract that might go against public policy would be an auction contract to sell gaming machines in Tennessee. Licensees should always consult their legal counsel over concerns of legal subject matter or questions of public policy.

## Consideration

Consideration is something of value given in exchange for a promise. In an auction scenario, the auctioneer "promises" to sell the owner's goods or services in exchange for something of value: generally a fee or commission. It is important to note that consideration does not have to be money.

In the execution of an auction contract, the legal subject matter and the consideration must be specified. The signatures on the contract indicate that a meeting of the minds occurred between the competent parties. (continued)

## Understanding Auction Contracts (continued)

Contractual issues do arise from time to time. A common issue with auction contracts is failing to clearly spell out all "the terms and conditions upon which [the] licensee receives the property for sale" [Reference T.C.A. 62-19-112(b)(9)]. This might involve the omission of the auction date, the commission rate, the date the auctioneer will pay the seller, or the amount of money the seller is paying for advertising expenses.

The written contract protects the sellers and the auctioneers. When entering into an auction sales contract, always record in writing the agreed upon terms and conditions, the specified legal subject matter, as well as the consideration.

Many auction complaints can be avoided by taking the care to enter into solid auction contracts with clearly identified terms and conditions.

In addition to the laws of Tennessee, the Uniform Commercial Code (UCC) Article II also addresses contracts. The UCC offers clear and practical definitions of the terms used in contracts to address the sale of goods. It also deals with the formation of contracts, including the offer and acceptance necessary to have a meeting of the minds, as well as delivery, risk of loss, title and other contractual remedies of enforcement.

**\*\* T.C.A. 62-19-111(h)(11)** All contracts for services to be performed by an auction firm, except an auto auction defined in Section 55-17-102(2), must be negotiated for and signed by an auctioneer who is a member of the firm or by the auctioneer's attorney.

**T.C.A. 62-19-112(b)** Denial, revocation or suspension of a license by commission....(8) Failing to furnish voluntarily to all interested parties, at the time of execution, copies of all written instruments prepared by the auctioneer or apprentice auctioneer.

**T. C. A. 62-19-112(b)(9)** Failing prior to the sale at public auction to enter into a written contract with the owner or consignee of any property to be sold, containing the terms and conditions upon which such licensee receives the property for sale.

**Legal Disclaimer:** This article is for educational and informational purposes only, and is not legal advice. No action should be taken in reliance on this information. While efforts have been made to provide current information, the above information may not include the latest developments in the law or may be incomplete. You should contact an attorney regarding any specific situation, their rights and possible legal actions.

## COMMISSION CALENDAR

February 1, 2016	9:00 am	Commission Meeting Conference Rm 1-B
April 4, 2016	9:00 am	Commission Meeting Conference Room 1-B

Commission Meetings are held at  
500 James Robertson Pkwy, Nashville, TN

### Continuing Education Seminar

March, 7 2016	9:00 am	West TN CE Seminar Aeneas Building 405 E. College St. Jackson, TN
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## Legal Reminder

### T.C.A. 62-19-107. Meeting of the commission.

(a) *The commission shall meet at least one (1) time each quarter of every calendar year for the purpose of transacting such business as may properly come before it.*

(b) *Special meetings of the commission shall be held at such times as the commission may provide in the bylaws it may adopt.*

(c) *Three (3) members shall constitute a quorum at a commission meeting.*

(d) *Due notice of each meeting at the time and place thereof shall be given each member in such a manner as the bylaws may provide.*

## Disciplinary Action

### September 2015

**Respondent:** Exit Realty Partners Auction Division, Manchester, TN

**Violation:** The auction's advertisement does not contain the bankruptcy court case number assigned by the court.

**Action:** \$500 Civil Penalty

**Respondent:** Rob Erskine, Memphis, TN

**Violation:** Unlicensed conduct

**Action:** \$1000 Civil Penalty

**Respondent:** Ricky D. Hinson and Hinson Auction & Real Estate Inc., Jackson, TN

**Violation:** Respondent has violated T.C.A. 62-19-112 (b)(12) "Any conduct of an auctioneer that demonstrates improper, fraudulent, incompetent or dishonest dealings."

**Action:** \$4000 Civil Penalty



The following Tennessee winter snow facts are from the National Weather Service:

Earliest snowfall: October 30, 1925  
Latest snowfall: April 25, 1910

The most snowfall in 24 hours was 17 inches on March 17, 1892. March of 1892 was also the month with the most snowfall. It totaled 21.5 inches for the month. The most snowfall for a season was 38.5 inches the winter of 1959-1960.

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***Please be sure to forward a copy of the NewsLine to licensees in your firm.***

*To receive email or text alerts from the Tennessee Auctioneer Commission  
go to the direct link at [www.tn.gov/notify-app/sign\\_up](http://www.tn.gov/notify-app/sign_up)*

## TYPES OF AUCTIONS

The Commission continues to receive complaints and questions seeking to clarify the difference between absolute auctions and reserve auctions.

Rule 0160-1-.19 Defines the types of auctions as follows:

***(1) Absolute auction/auction without reserve***—An auction at which property put up for sale is sold to the highest bidder, where the seller may not withdraw the property from the auction after the auctioneer calls for bids unless no bid is made in a reasonable time, where the seller may not bid himself or through an agent, and where the seller will deliver marketable title.

***(2) At auction/auction with reserve***—An auction at which the seller or his agent reserves the right to establish a minimum bid, to accept or reject any and all bids, and to withdraw the property at any time prior to the completion of the sale by the auctioneer.

Auctions advertised as "Auction" or "At Auction" are presumed to be auctions with reserve. Auctions advertised "Absolute" must be offered in such a manner as to meet the definition set forth in Rule 0160-1-.19.

Confusion arises when the auctioneer or auction gallery is not clear with the general auction public about what type of auction they are conducting.